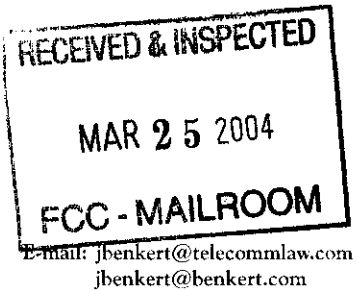


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March 24, 2004

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Re: Petition for Rulemaking to  
Amend Section 73.202(b) ,  
Table of Allotments, FM  
Broadcast Stations,  
(Hutchinson and Haven,  
Kansas)

Dear Ms. Dortch:

Transmitted herewith, on behalf of Ad Astra per Aspera Broadcasting, Inc., are an original and four copies of a Petition for Rulemaking seeking to amend Section 73.202 of the Commission's Rules. An additional copy is also enclosed, which we respectfully request you receipt-stamp an return in the enclosed self-addressed stamped envelope.

Questions and copies of any correspondence regarding this matter should be directed to undersigned counsel.

Very truly yours,

Joseph P. Benkert

Enclosures

No. of Copies rec'd 0+4  
List ABCDE  
7m-mB  
04-66

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

RECEIVED & INSPECTED
MAR 25 2004
FCC - MAILROOM

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket No. ____
Table of Allotments,	)	RM-____
FM Broadcast Stations	)	
(Hutchinson and Haven, Kansas)	)	

To: Assistant Chief, Audio Division

**PETITION FOR RULEMAKING**

Ad Astra per Aspera Broadcasting, Inc. ("Ad Astra"), licensee of Station KSKU(FM), Hutchinson, Kansas, by its counsel and pursuant to Sections 1.401 and 1.420(i) of the Commission's Rules, 47 C.F.R. §§1,401, 1.420(i), hereby petitions the Commission to amend the FM Table of Allotments, 47 C.F.R. §73.202(b), by (i) deleting Channel 246C2 at Hutchinson, Kansas, (ii) adding Channel 246 C2 at Haven, Kansas, and (iii) modifying the license for KSKU(FM), Hutchinson, Kansas, to specify Haven, Kansas as the station's community of license in accordance with *Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd. 4870 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990). Thus, Ad Astra proposes to amend Section 73.202(b) of the Commission's rules as follows:

	<b><u>Channel No.</u></b>	
<b><u>City</u></b>	<b><u>Present</u></b>	<b><u>Proposed</u></b>
Hutchinson, KS	211C, 246C3/C2, 271C 275C1	211C, 271C, 275C1
Haven, KS	---	246C2

In support whereof, Ad Astra states the following:

Ad Astra's proposed allotment of KSKU's channel 246C2 to Haven, Kansas, is mutually exclusive with the present allotment of KSKU's channel at Hutchinson, Kansas. This proposed change is permissible under Section 1.420(i) of the Commission's Rules which expressly authorizes the Commission to "modify the license or permit of an FM or television broadcast station to specify a new community of license where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment."

Ad Astra's proposal will result in a preferential arrangement of allotments pursuant to the Commission's FM allotment priorities as set forth in Revision of FM Assignment Policies and Procedures, *Second Report and Order*, 90 FCC 2d 88 (1982) ("*FM Assignment Policies*"). The Commission's FM allotment priorities are (1) first full-time aural service, (2) second full-time aural service, (3) first local service, and (4) other public interest matters. Co-equal weight is given to priorities (2) and (3).

Allotment of Channel 246C2 to Haven, Kansas, will provide that community with its first local service. At the same time, deletion of the Channel 246C3/C2 from Hutchinson will not deprive that community of its only local service, since AM Station KWBW and FM Stations KHCC, KZSN and KHUT will continue to be licensed to Hutchinson, and vacant FM channel 240A will remain allotted to Hutchinson. The protected service contour of a relocated KSKU, operating on Channel 246C2 at maximum facilities at the reference site proposed for Haven (37° 47' 47" N, 97° 31' 59" W) will provide service to 595,200 persons in 8,475 square kilometers. This represents a net gain of 498,290 persons, or 514%, and 3,680 square kilometers, or 76.8%, over the currently licensed KSKU facility. The proposed allotment of Channel 262C2 at Haven,

Kansas and deletion of that channel at Hutchinson, Kansas, will meet the third and fourth criteria under *FM Assignment Policies*.

The proposed 70 dBu contour of a relocated KSKU operating on Channel 246C2 with maximum facilities at the proposed reference site will encompass more than 50% of the Wichita, Kansas urbanized area. An analysis of the interdependence of Haven and Wichita under the Commission's policies set forth in *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988) ("*Tuck*") is thus required.

A *Tuck* analysis involves weighing the relative equities of three principal factors: (a) the signal population coverage; (b) the size and proximity of the specified community to the central city; and (c) the interdependence of the specified community to the central city of the "urbanized area." This last factor is the most important. As the Commission has stated:

In assessing the interdependence of the specified community with the central city, we will consider the following characteristics: (1) the extent to which community residents work in the larger metropolitan area, rather than in the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials; (5) whether the smaller community has its own telephone book provided by the local telephone company or zip code; (6) whether the smaller community has its own commercial establishments, health facilities, and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising markets; and (8) the extent to which the specified community relies on the larger metropolitan area for various municipal services such as police, fire protection, schools and libraries.<sup>1</sup>

Under the *Tuck* criteria, it must be concluded that Haven, Kansas is not interdependent to Wichita, Kansas. Most significantly, although a relocated KSKU is predicted to place a 70 dBu contour over at least 50% of the Wichita, Kansas urbanized area, Haven is not part of the Wichita, Kansas urbanized area.

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<sup>1</sup> *Tuck*, at ¶36.

The City of Haven is located over 25 miles from Wichita, in agricultural Reno County, none of which falls within the Wichita urbanized area. Haven has its own City Government, with a City Council, Mayor and City Administrator. The City provides electricity, water, sewer and refuse disposal services to residences and businesses in the City. Haven also has its own police and fire departments, as well as a Parks and Recreation Department which provides a schedule of recreation programs, and maintains the city's parks, ball fields, pool and other parks and recreation areas. Haven also provides public schools, including a grade school, middle school and high school, and a public library. The City has its own post office and zip code.

The local newspaper is published in nearby Mount Hope, a smaller city whose children attend the Haven public schools. The Mount Hope Clarion covers the local news of Haven and several smaller surrounding cities. The Haven telephone book also includes several of the nearby cities and surrounding rural areas; but does not include Wichita and Haven is not included within the Wichita metro telephone book.

Haven is also home to over fifty businesses, including car dealerships; banks and credit unions; real estate, securities and insurance brokers; storage; transportation companies; contractors; manufacturing; and building, ranch and farm supplies. Retail establishments in Haven also include food stores, mattress and appliance stores, and barbers/hair salons. Examples of businesses in Haven include D&A Trucking, Schmidt's Haven Ford, BankHaven, Goertzen Quality Wheat, Haven Insurance Agency, Haven Sign Company, Haven Steel Products, Kincaid Equipment Manufacturing, Wright Tool Co., Pendleton Construction, Securities America, Miller Carpets, Shep Chevrolet Geo, VanCampen Funeral Home and Whitetail Acres Bed & Breakfast.

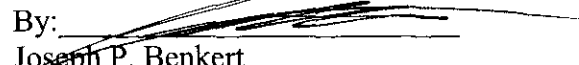
Haven is not interdependent with Wichita but provides its own government and community services, schools, and private manufacturing, retail and service businesses. The

proposed reallocation of Channel 246C2 to Haven will thus bring the City of Haven its first local broadcast service, and would result in additional broadcast service by KSKU to 498,290 additional persons, and 3,680 additional square kilometers. This represents a preferential reallocation plan under the third and fourth allotment priorities set forth in *FM Assignment Policies, supra*. Ad Astra certifies that if this petition requesting the reallocation of Channel 246C2 to Haven is granted, Ad Astra will promptly file an application for a construction permit for the modified facility, and upon grant, will promptly construct the new facility.

In light of the foregoing, Ad Astra respectfully requests that the Commission (i) grant this Petition for Rulemaking, (ii) amend the FM Table of Allotments by reallocating Channel 246C2 from Hutchinson, Kansas to Haven, Kansas, and (iii) modify the license of KSKU to specify Haven, Kansas as its city of license.

Respectfully submitted,

**Ad Astra Per Aspera Broadcasting, Inc.**

By:   
Joseph P. Benkert  
Its Counsel

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March 24, 2004

JOHN J. MULLANEY  
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**MULLANEY ENGINEERING, INC.**

9049 SHADY GROVE COURT  
GAITHERSBURG, MD 20877

**ENGINEERING EXHIBIT EE-RM:**

**RULE MAKING TO AMEND  
FM TABLE OF ALLOTMENTS**

**DELETE CH. 246C2 AT HUTCHINSON, KS  
ALLOT CH. 246C2 TO HAVEN, KS**

**MARCH 12, 2004**

ENGINEERING STATEMENT PREPARED ON BEHALF OF  
AD ASTRA PER ASPERA BROADCASTING, INC..  
LICENSEE OF KSKU (FM)  
CHANNEL 246C2 - HUTCHINSON, KANSAS

Facility ID: 59995

**ENGINEERING EXHIBIT EE-RM:**

**RULE MAKING TO AMEND  
FM TABLE OF ALLOTMENTS**

**DELETE CH. 246C2 AT HUTCHINSON, KS  
ALLOT CH. 246C2 TO HAVEN, KS**

**TABLE OF CONTENTS:**

1. Declaration of Engineer
2. Narrative Statement
3. Figure 1, Channel Allocation Study for Ch. 246C2.  
From Special Ref. Point for Haven, KS
4. Figure 2, General Area Map.

## Declaration

I, John J. Mullaney, declare and state that I am a graduate electrical engineer with a B.E.E. and my qualifications are known to the Federal Communications Commission, and that I am an principal engineer in the firm of Mullaney Engineering, Inc., and that I have provided engineering services in the area of telecommunications since 1977. My qualifications as an expert in radio engineering are a matter of record with the Federal Communications Commission.

The firm of Mullaney Engineering, Inc., has been requested by Ad Astra Per Aspera Broadcasting, Inc., to prepare the instant engineering exhibit in support of a rule making petition to amend the FM Table of Allotments (FCC Facility ID Number: 59995).

All facts contained herein are true of my own knowledge except where stated to be on information or belief, and as to those facts, I believe them to be true. I declare under penalty of perjury that the foregoing is true and correct.

/s/ John J. Mullaney

John J. Mullaney, Consulting Engineer

Executed on the 12th day of March 2004

**ENGINEERING EXHIBIT EE-RM:**

**RULE MAKING TO AMEND  
FM TABLE OF ALLOTMENTS**

**DELETE CH. 246C2 AT HUTCHINSON, KS  
ALLOT CH. 246C2 TO HAVEN, KS**

**NARRATIVE STATEMENT:**

This engineering statement has been prepared on behalf of Ad Astra Per Aspera Broadcasting, Inc., licensee of Radio Station KSKU, at Hutchinson, Kansas (Facility ID 59995). KSKU holds a one-step upgrade from Ch. 246C3 to 246C2 at Hutchinson, Kansas (un-built CP). The purpose of this statement is to provide engineering in support of a rule making petition to amend the FM Table of Allotments to delete Ch. 246C3/C2 at Hutchinson, KS and re-allot Ch. 246C2 to Haven, KS, and to modify the license of KSKU accordingly.

The city of Hutchinson will continue to be served by up to five aural services (1-AM, 3-FM & 1FM Vacant allotment) and grant of this proposal will result in the first aural service to Haven, KS. Both cities are located in the same county (Reno).

KSKU wishes to point out that the upgrade it seeks is on its existing channel with a proposed location which is less than the separation specified by Section 73.207 (to both the licensed C3 and the CP for the C2) and, therefore, it is not necessary to demonstrate the availability of an additional equivalent channel in accordance with Section 1.420(g) of the rules.

The proposed reference point is not within 290 kilometers (180 miles) of a United States Border and, therefore, foreign concurrence is not required.

## Proposed Reference Site

For the purposes of this rule making the applicant proposes to use the a special reference point for Haven, KS.

N. Latitude:            37° 47' 47"    NAD-27  
W. Longitude:        97° 31' 59"

The proposed reference site will provide an unobstructed view of the city of license, Haven and is located close enough to serve the entire community with the required 3.16 mV/M or 70 dBu contour. **Figure 2** is a general area map showing Haven, KS.

## Channel Allocation Study

**Figure 1** is a Channel Allocation Study from a special reference point/site that KSKU wishes to use for Haven, Kansas. The study indicates the actual & required separation in kilometers to all licenses, construction permits, applications, vacant allocations and pending rule makings. From this study it can be determined that proposed reference point exceeds all of these minimum separations.

The licensed C3 site of KSKU is located 31.7 km (19.7 miles) away whereas the required co-channel separation is 177 km (110.0 miles). Therefore, the proposed substitution is in accordance with Section 1.420(g) and is not required to demonstrate the availability of an additional equivalent channel. The city of Haven is located 24.8 km (15.4 mi) WNW of the site requested herein.

## Public Interest Showing

KSKU presently operates as a C3 facility with maximum equivalent facilities (13.5 kW at 137 meters HAAT). The proposed change in community & upgrade to Class C2 facilities will permit KSKU to serve a wider area and more population. KSKU presently provides a 60 dBu service to 96,910 persons and 4,795 square kilometers. KSKU anticipates construction of a maximum Class C2 facility which will provide 60 dBu service to 595,200 persons and 8,475 square kilometers (2000 Census). This represents a 514.% **increase** in population and a 76.8% **increase** in area.

The city of Haven is located in Reno County and has a population of 1,175 persons. The allotment of Channel 246C2 will be the first aural service licensed to this community. The city of Hutchinson will continue to have one licensed AM (KWBW-1450 kHz), three licensed FM (211C-KHCC, 271C-KZSN & 275C1-KHUT) and one Vacant FM (240A) facilities upon grant of this RM petition.

An evaluation of the licensed and proposed 60 dBu contours indicates that they both serve an area which is already served by at least **five FM commercial services**.

The proposed 70 dBu contour will encompass **more than 50%** of the Wichita, KS, urbanized area.

Based upon the above information, **KSKU believes that its request results in a preferential arrangement of allotments and therefore, serves the public interest.**

### SUMMARY

Ad Astra Per Aspera Broadcasting, Inc., licensee of Radio Station KSKU, at Hutchinson, Kansas (Facility ID 59995) requests that the FM Table of Allotments be amended to delete Ch. 246C3/C2 at Hutchinson, KS, and re-allot Ch. 246C2 to Haven, KS, and to modify the license of KSKU accordingly.

	<b>Present</b>	<b>Proposed</b>
Hutchinson, KS	211C, <b>246C3/C2</b> 271C, 275C1	211C, 271C, 275C1
Haven, KS	- - - - -	<b>246C2</b>

KSKU believes that the proposed change in community and upgrade to Class C2 facilities **will serve the public interest**. If granted, KSKU will quickly file an application for construction permit.

/s/ John J. Mullaney

John J. Mullaney, Consulting Engineer

March 12, 2004.

# RADIO STATION KSKU - RM

## REFERENCE

37 47 47 N  
97 31 59 W

CLASS = C2

Current Spacings

Channel 246 - 97.1 MHz

## DISPLAY DATES

DATA 03-12-04

SEARCH 03-12-04

Call	Channel	Location	Dist	Azi	FCC	Margin
KSKU.A	APP	246C2 HAVEN special ref	KS 0.00	0.0	190.0	RM
KSKU.C	CP	246C2 Hutchinson	KS 36.45	270.9	190.0	C2 CP
KSKU	LIC	246C3 Hutchinson	KS 31.70	306.4	177.0	C3 LIC
RADD	ADD	247C3 Howard	KS 117.14	97.1	117.0	0.14
KBBE	LIC	244A Mcpherson	KS 61.70	348.9	55.0	6.70
KQOB	LIC-N	245C Enid	OK 202.02	184.1	188.0	14.02
KQOB.A	APP-N	245C Enid	OK 202.02	184.1	188.0	14.02
RDEL	DEL	245C Enid	OK 202.02	184.1	188.0	14.02
RADD	ADD	244A Harper	KS 11.91	222.1	55.0	16.91
RADD	ADD	245C0 Enid	OK 226.57	207.5	176.0	50.57

The proposed special reference point is located 24.8 km (15.4 mi)  
On a bearing of N-117-E of Haven, Kansas. A Class C2 city grade  
Reference extends for a radius of 32.7 km.

CHANNEL STUDY - 246C2 - KSKU - MOVE TO HAVEN, KS

RULEMAKING PROPOSAL  
CH. 246C2 - HAVEN, KANSAS

MULLANEY ENGINEERING, INC.  
GAITHERSBURG, MARYLAND

FIGURE 1  
MARCH 2004

# FIGURE 2 - GENERAL AREA MAP

## Rulemaking Proposal KSKU - CH. 246C2 - Haven, KS

### Special Reference Point

Latitude: 37-47-47 N  
Longitude: 097-31-59 W  
ERP: 50.00 kW  
Channel: 246 C2  
Frequency: 97.1 MHz  
AMSL Height: 573.0 m  
Elevation: 425.1 m  
Horiz. Pattern: Omni

Haven, KS

LIC  
C3

32.7 km  
Ref Arc

CP  
C2

70 & 60 dBu  
FCC Contours

Mullaney Engineering - March 2004

Scale 1:1,000,000

Scale 1:1,000,000

